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COMMISSION ON HUMAN RIGHTS
Fiftieth session
Agenda item 10 (c)

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR: (c) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES

Argentina*, Australia, Austria, Belgium*, Bulgaria, Cameroon, Chile, Costa Rica, Czech Republic*, Denmark*, Finland, France, Hungary, Ireland*, Italy, Luxembourg*, Mauritius, New Zealand*, Norway*, Poland, Romania, Russian Federation, Rwanda*, Senegal*, Slovakia*, Spain*, Sweden*, Switzerland*: draft resolution

1994/... Question of enforced disappearances

The Commission on Human Rights,

Bearing in mind General Assembly resolution 33/173 of 20 December 1978, in which the Assembly requested the Commission on Human Rights to consider the question of disappeared persons with a view to making appropriate recommendations, and all other United Nations resolutions concerning missing or disappeared persons,

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* In accordance with rule 69, paragraph 3, of the rules of procedure of the functional commissions of the Economic and Social Council.

Recalling its resolution 20 (XXXVI) of 29 February 1980, in which it decided to establish a working group consisting of five of its members, to serve as experts in their individual capacity, to examine questions relevant to enforced or involuntary disappearances, and its resolutions 1991/41 of 5 March 1991, 1992/30 of 28 February 1992 and 1993/35 of 5 March 1993,

Recalling also General Assembly resolution 47/133 of 18 December 1992, by which the General Assembly adopted the Declaration on the Protection of All Persons from Enforced Disappearance,

Emphasizing that, in the Vienna Declaration and Programme of Action, the World Conference on Human Rights, held in Vienna from 14 to 25 June 1993, welcomes the adoption of the Declaration on the Protection of All Persons from Enforced Disappearance and calls upon all States to take effective legislative, administrative, judicial or other measures to prevent, terminate and punish acts of enforced disappearances,

Noting that the Working Group on Enforced or Involuntary Disappearances considers the adoption of the latter Declaration to be the most encouraging development since its establishment in respect of efforts to combat enforced disappearances, especially in so far as it recognizes that the systematic practice of such acts "is of the nature of a crime against humanity",

Expressing concern in this connection that, according to the Working Group, the legislation, policy and practice of many States run counter to the provisions of the Declaration,

Convinced of the need to continue implementing the provisions of General Assembly resolution 33/173 and of the other United Nations resolutions on the question of disappeared persons, with a view to finding solutions for cases of disappearance and eliminating enforced disappearances, duly taking into account the provisions of the Declaration,

Noting General Assembly resolution 47/132 of 18 December 1992,

Deeply concerned at the persistence of the practice of enforced disappearances in various parts of the world,

Concerned at the large number of reports concerning harassment, ill-treatment and intimidation of witnesses of disappearances or relatives of disappeared persons,

Recalling in this connection its resolution 1993/64 of 10 March 1993 on cooperation with representatives of United Nations human rights bodies,

Noting with satisfaction in this connection that the Working Group reports increased cooperation on the part of most States,

Emphasizing the relevance of its resolution 1993/33 of 5 March 1993 on forensic science to the activities of the Working Group and noting with appreciation the establishment by the Secretary-General of a list of experts in this field,

Having considered the report of the Working Group (E/CN.4/1994/26 and Add.1),

1. Expresses its appreciation to the Working Group on Enforced or Involuntary Disappearances for the way in which it is performing its task, and thanks it for submitting a report to the Commission in accordance with resolution 1993/35;

2. Takes notes of the report of the Working Group;

3. Requests the Working Group, in its efforts to help to eliminate the practice of enforced disappearances, to submit to the Commission all information it deems necessary and any specific recommendation it may wish to make regarding the fulfilment of its task;

4. Reminds the Working Group of the need to observe, in its humanitarian task, United Nations standards and practices regarding the handling of communications and the consideration of Government replies;

5. Invites all Governments to take appropriate legislative or other steps to prevent and punish the practice of enforced disappearances, with special reference to the Declaration on the Protection of All Persons from Enforced Disappearance, and to take action to that end nationally, regionally and in cooperation with the United Nations;

6. Recalls in this regard that all acts of enforced disappearance are offences punishable by appropriate penalties which take into account their extreme seriousness under criminal law;

7. Notes with concern that, as the Working Group stresses in its report (para. 539), some Governments have never provided substantive replies concerning enforced disappearances alleged to have occurred in their countries;

8. Deplores the fact that, as the Working Group points out in its report, some Governments have not acted on the recommendations concerning them made in the reports of the Working Group, and requests the Working Group to continue to submit to the Commission information on the follow-up to its recommendations;

9. Urges the Governments concerned, particularly those which have not yet responded to communications transmitted to them by the Working Group, to cooperate with and assist the Working Group so that it may carry out its mandate effectively, and in particular to reply expeditiously to its requests for information;

10. Also urges the Governments concerned to intensify their cooperation with the Working Group on any action taken pursuant to recommendations addressed to them by the Working Group;

11. Once again urges the Governments concerned to take steps to protect the families of disappeared persons against any intimidation or ill-treatment to which they might be subjected;

12. Encourages the Governments concerned to give serious consideration to inviting the Working Group to visit their countries so as to enable the Working Group to fulfil its mandate even more effectively;

13. Urges Governments to take steps to ensure that, when a state of emergency is introduced, the protection of human rights is guaranteed, particularly as regards the prevention of enforced disappearances;

14. Reminds Governments of the need to ensure that their competent authorities conduct prompt and impartial inquiries [in all circumstances] whenever there is reason to believe that an enforced disappearance has occurred in a territory under their jurisdiction;

15. Further recalls that, if allegations are confirmed, perpetrators should be prosecuted;

16. Expresses its profound thanks to the many Governments that have cooperated with the Working Group and replied to its requests for information, and to the Governments that have invited the Working Group to visit their countries, asks them to give all necessary attention to the Working Group's recommendations, and invites them to inform the Working Group of any action they take on those recommendations;

17. Requests the Working Group, pursuant to its mandate, to take into account the provisions of the Declaration on the Protection of All Persons from Enforced Disappearance, and to modify its working methods if necessary;

18. Invites the Working Group to assess the practice of States in the light of the Declaration, to identify obstacles to the realization of the provisions of the Declaration and to recommend ways of overcoming those obstacles, taking into account the discussions of the Sub-Commission on Prevention of Discrimination and Protection of Minorities;

19. Encourages States, as some have already done, to provide concrete information on measures taken to give effect to the Declaration, as well as obstacles encountered;

20. Invites the Working Group to continue to consider the question of impunity, in close collaboration with the rapporteurs appointed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities and with due regard for the relevant provisions of the Declaration;

21. Takes note, in this connection, of the first determining elements identified by the Working Group, inter alia habeas corpus, the proper functioning of justice, the protection of persons involved in any way in the investigation from any kind of reprisals, the initiation of inquiries and their continuation pending clarification of the victims' fate, and the trial by civilian courts of alleged perpetrators, who should not benefit from any special amnesty law or other similar measures having the effect of exonerating them from any prosecution or penal sanction;

22. Requests the Working Group to pay attention to cases of children subjected to enforced disappearance and children of disappeared persons and to cooperate closely with the Governments concerned to search for and identify these children;

23. Endorses the proposal of the Working Group to establish a special procedure concerning the question of enforced disappearances in the territory of the former Yugoslavia under the joint responsibility of a member of the Working Group and the Special Rapporteur on human rights in the former Yugoslavia;

24. Requests the Working Group to report on its work to the Commission at its fifty-first session and to continue to discharge its mandate discreetly and conscientiously;

25. Requests the Secretary-General to ensure that the Working Group really receives all necessary assistance, in particular the staff and resources it requires to perform its functions, especially in carrying out missions, following them up or holding sessions in countries that would be prepared to receive it;

26. Also requests the Secretary-General to keep the Working Group and the Commission on Human Rights regularly informed of the steps he takes to secure the widespread dissemination and promotion of the Declaration on the Protection of All Persons from Enforced Disappearance.